

Service Date: April 25, 2013

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

IN THE MATTER OF the Complaint of	)	REGULATORY DIVISION
James T. and Elizabeth Gruba,	)	
Leo G. and Jeanne R. Barsanti, and	)	DOCKET NO. D2010.2.14
Michael W. and Frances E. Paterson	)	
On Behalf of Themselves and Others	)	ORDER NO. 7084e
Similarly Situated,	)	
	)	
Complainants,	)	
	)	
v.	)	
	)	
NorthWestern Energy	)	
	)	
Respondent.	)	

**PROCEDURAL ORDER**

1. In February 2010, Complainants’ predecessors filed with the Public Service Commission (Commission) an original Complaint against NorthWestern Energy challenging certain aspects of the operation of street lighting districts in Billings, in particular, and Montana in general, including the ownership charge contained within the electric lighting tariff and the absence of light emitting diode (LED) luminaires on street lights. The Commission dismissed the original Complaint, and Complainants’ predecessors filed for judicial review in the Thirteenth Judicial District Court, Yellowstone County. The district court affirmed the Commission’s dismissal, and Complainants’ predecessors appealed to the Montana Supreme Court. The Montana Supreme Court affirmed the Commission’s dismissal and remanded the matter back to the Commission to consider a subsequently filed amended complaint. Now before the Commission for its consideration is Complainants’ Second Amended Complaint.

2. The Commission, through delegation to staff, hereby establishes this Procedural Order to be followed in this proceeding. This Order is effective immediately and remains effective unless modified by the Commission or its staff. A party may apply for reconsideration of this Order within ten days of its service date. Nothing in this Order limits the right of the Commission or its staff to inspect the books, accounts, papers, records or memoranda of NorthWestern at any time. Mont. Code Ann. § 69-3-106 (2011).

### Briefing

3. The Commission orders briefing on the following issues:
- a. On what basis do Michael and Frances Paterson have standing as complainants in this matter in light of the Montana Supreme Court decision *Williamson v. NWE*, 2012 MT 32?
  - b. Commission staff has concluded that a complaint may be filed pursuant to Mont. Code Ann. § 69-3-321 but that Mont. Code Ann. §§ 69-3-301 and -304 and ARM 38.5.8218 do not serve as a basis on which a complaint may be based. If you disagree with staff's conclusion, briefly explain how Mont. Code Ann § 69-3-301 and -304 and ARM 38.5.8218 can serve as a basis for Complainants' claims in the Second Amended Complaint?
  - c. Based on what authority can the Commission order a refund of previously collected "ownership charges" that were collected pursuant to PSC-approved electric lighting tariff? (See paragraph J on page 4 of the Second Amended Complaint.) Cite the specific legal authority and briefly explain.
  - d. Pursuant to what authority can the Commission order NorthWestern Energy to use a specific type of equipment, such as LED technology, in street lighting districts? Briefly explain.
  - e. Pursuant to what authority can the Commission require NorthWestern to develop a technology-specific charge within the electric lighting tariff, as contemplated in L on page 5 of the Second Amended Complaint? Briefly explain.
  - f. Pursuant to what authority can the Commission order NorthWestern Energy to amend contracts referred to in paragraph G on page 4 of the Second Amended Complaint? Briefly explain.

- g. Pursuant to what authority can the Commission consider and decide on the constitutionality of a statute? Briefly explain.

3. Complainants are ordered to submit a brief on the above-referenced items, containing no more than 10,000 words, on or before May 29, 2013. NorthWestern Energy is ordered to submit a response to Complainants' brief, containing no more than 10,000 words, on or before July 1, 2013. Complainants may submit a reply brief, containing no more than 5,000 words, on or before July 15, 2013.

#### Schedule

4. Following the Commission's consideration of the above briefs and any action taken, the Commission intends to give written notice of the Second Amended Complaint on or before August 5, 2013. The notice will establish an intervention deadline for persons or entities interested in and directly affected by the subject matter of this complaint who wish to petition the Commission to participate in this matter.

5. Following the close of the intervention deadline, Commission staff will convene a scheduling conference to establish the remainder of the procedural schedule.

#### Ex Parte Communication

6. As a contested case, ex parte communication is generally prohibited in this proceeding. Any communication between a Commissioner and a party or a party's representative about an issue of fact or law in this proceeding that another party has not had notice of and an opportunity to participate in is an ex parte communication. *Id.* at § 2-4-613.

#### Service and Filing

7. A party must serve a copy of every pleading, motion, brief, discovery request or response, and other document it files in this proceeding on every other party. In order to file a document with the Commission, a party must: (1) Submit the document electronically (e-file) on the Commission's website <http://psc.mt.gov> ("Account Login/Registration" under "Electronic Documents" tab); and (2) physically deliver or mail the original document to the Commission at 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601. The Commission will not post an e-filed document to its website until it receives the original from the filing party.

Service or filing by means of facsimile is prohibited. Service by mail does not extend a deadline. In addition to serving a copy of every discovery request on every other party, a party must also send every discovery request to each party's attorney by email.

### Discovery

8. Data requests are the primary method of discovery in proceedings before the Commission, but parties may employ techniques of prehearing discovery permitted in state civil actions. Admin. R. Mont. 38.2.3301 (2012). The Commission directs the parties to prepare data requests according to the following guidelines:

- a. Assign a unique, consecutive number to each data request (e.g., MCC-001), regardless of the party to whom the request is directed (e.g., the Commission may direct PSC-001 through 008 to NorthWestern, PSC-009 through 016 to an intervenor, and PSC-017 through 019 again to NorthWestern).
- b. At the beginning of each data request, consistently describe its subject in five words or less. In addition, a party may direct the request to a particular witness or include citations to exhibits or testimony.
- c. For multi-part requests, use lower case letters (a-e) to denote up to five parts.
- d. The following are examples of acceptable data requests:

PSC-006      RE:    Purchased Gas Contracts  
                    Witness Doe, JBD-4:13-15.

Please provide the origination and expiration date for each contract.

PSC-007      RE:    Bypass  
                    Witness Roe, FAR-14:11-26.

- a. What risks of bypass would be avoided by the shareholders as a result of the company's proposed treatment?
- b. What risks of bypass would be avoided by the ratepayers as a result of the company's proposed treatment?

9. A party may object to written discovery within seven calendar days from service by filing an objection with the Commission and serving it on all parties. The Commission may

schedule oral argument before ruling on an objection. The Commission will consider a party that does not object within seven days to have accepted the discovery request. After the deadline established in the first sentence of this paragraph, a party may object to written discovery upon a showing of good cause. If a party objects based on privilege, it must file a privilege log with sufficient information for the Commission to determine whether the privilege applies. If a party objects based on confidentiality, it must file a motion for a protective order.

10. If a discovery response fails to answer the request, the discovering party may move within seven calendar days after service of the response for an order compelling an answer. The motion, which the party must file with the Commission and serve on all parties, must identify the relief requested. The Commission may schedule oral argument before ruling on a motion to compel, and will set a new response deadline if it grants the motion.

11. In response to a party's failure to answer written discovery, the Commission may: (1) Refuse to allow it to support or oppose related claims; (2) prohibit it from introducing related evidence; (3) strike pleadings, testimony, or parts thereof; (4) stay the proceeding until the request is satisfied; or (5) dismiss the proceeding, or parts thereof.

12. A party may submit written discovery after a deadline established in this Order either by agreement of the parties or with approval of the Commission upon a showing of good cause that addresses why the discovering party missed the deadline.

#### Pre-hearing Motions, Conferences and Memoranda

13. A party must make a pre-hearing motion, including a motion to strike pre-filed testimony, at the earliest possible time. A responding party must file and serve its response brief within seven calendar days of service of the motion. If the movant wishes to reply, it must file and serve its reply brief within five calendar days of service of the response brief. Upon the request of a party, the Commission may allow oral argument on a pre-hearing motion.

14. The Commission may schedule a pre-hearing conference at any time prior to the hearing to discuss the feasibility of settlement in whole or in part, simplification of the remaining issues through admissions of fact, and any other matters that may expedite the hearing.

15. Unless the parties agree to file jointly, each party must file and serve a pre-hearing memorandum listing the following information regarding the hearing: (1) Uncontested issues; (2) contested issues; (3) witnesses it intends to call; (4) exhibits and discovery it intends

to introduce; and (5) any special accommodations it seeks regarding witness sequence or scheduling. If a party intends to introduce a discovery response, it must identify the number of the request, the responding witness, and the issue addressed.

### Hearing

16. The Montana Rules of Evidence will govern the hearing. Because each party is entitled to reasonable notice of what issues will be addressed at the hearing, the Commission may not allow a party to raise an issue at a hearing unless it is reasonably related to an issue previously identified in the proceeding.

17. Prior to the hearing, the parties must arrange with the court reporter and presiding officer to consistently mark all proposed exhibits and pre-filed testimony for reference.

18. A party must make each person that authored a discovery response available for cross-examination at the hearing unless the Commission approves an agreement among the parties to waive cross-examination and allow admission of the evidence without the author. A witness need not recite pre-filed testimony before counsel moves to admit the testimony into the record.

19. When a party seeks to cross-examine a witness based on a document not previously filed in this proceeding, it must make copies of the document available to each Commissioner, party, and staff, unless it shows good cause why copies are not available. A party moving to admit discovery into the record must provide a copy for the court reporter.

20. At the discretion of the Commission, members of the public may comment on the proceeding at the hearing.

### Open Meetings

21. All Commission meetings are open to the public except as provided by law. The Commission issues notice of routine business meetings and work sessions through a weekly agenda service list. In order to receive notice of the weekly agenda, which may relate to this proceeding, a party must request to be added to the weekly agenda service list.

DONE AND DATED this 25<sup>th</sup> day of April 2013 by delegation to Commission staff as an Order of the Commission.

BY THE MONTANA PUBLIC SERVICE COMMISSION

W. A. (BILL) GALLAGHER, Chairman

BOB LAKE, Vice Chair

KIRK BUSHMAN, Commissioner

TRAVIS KAVULLA, Commissioner

ROGER KOOPMAN, Commissioner